

UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF SOUTH CAROLINA

IN RE: )  
 )  
SUTER PROPERTY GROUP, LLC. )  
 )  
Debtor. )  
\_\_\_\_\_ )

B/K Case No.02-05618-B

Chapter 11

FILED 11  
23 JUN -3 AM 9:56  
COURT  
SOUTH CAROLINA

TO: All Creditors and Parties in Interest

**NOTICE AND APPLICATION FOR SALE OF PROPERTY  
FREE AND CLEAR OF LIENS AND DISPUTED INTEREST**

YOU ARE HEREBY NOTIFIED that the Debtor in this case is applying for approval to sell the property of its estate described below free and clear of liens, judgments and other encumbrances according to the terms and conditions stated below.

TAKE FURTHER NOTICE that any response, return and/or objection to this application, should be filed with the Clerk of the Bankruptcy Court no later than 20 days from service of the motion/application and a copy simultaneously served on all parties in interest.

TAKE FURTHER NOTICE that no hearing will be held on this application unless a response, return and/or objection is timely filed and served, in which case, the Court will conduct a hearing on **July 25, 2002 at 9:00 a.m.** in the United States Bankruptcy Court, 145 King Street, Room 225, Charleston, South Carolina. No further notice of this hearing will be given.

TYPE OF SALE: Private Sale

PROPERTY TO BE SOLD: 58 Simmons Street, Charleston, SC 29403; TMS#4631201142

**NOTICE: THE DEBTOR IS SELLING THE ABOVE-REFERENCED PROPERTY "AS IS," WITH NO WARRANTIES WHATSOEVER. THE BUYER AGREES TO RECEIVE THE PROPERTY WITH ALL FAULTS. THE DEBTOR MAKES NO WARRANTY, EXPRESS OR IMPLIED, REGARDING THE PROPERTY, AND SPECIFICALLY EXCLUDES ANY IMPLIED WARRANTY OF MERCHANTABILITY AND ANY IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR USE. PROPERTY TO BE CONVEYED BY QUIT CLAIM DEED.**

**THE BUYER HAS BEEN GIVEN THE OPPORTUNITY TO EXAMINE THE PROPERTY BEFORE SIGNING ANY CONTRACT OR SUBMITTING A BID TO PURCHASE THE PROPERTY, AND TO PERFORM SUCH TESTING, IF APPLICABLE, TO DETECT POSSIBLE LATENT DEFECTS.**

PRICE: \$800,000.00 (cash or certified funds)  
For the specifics of this contract of sale, see Exhibit "A" attached hereto.

APPRAISAL VALUE: \$800,000.00 per Debtor's realtor

NAME OF BUYER: Clay Rice and/or his assigns  
222 Forest Trail  
Isle of Palms, SC 29451

(The Buyer does not have any known adverse interest to this case or any parties involved in the case, including the Debtor, its counsel and the U.S. Trustee's office. The Buyer is not related to the Debtor and is not a creditor of the Debtor.)

PLACE, DATE AND TIME OF SALE: The sale shall take place as soon as possible after final Bankruptcy Court approval at a date, place and time to be agreed upon by the parties.

SALES AGENT/AUCTIONEER/BROKER/ETC.: William Storen, Belser Thompson Real Estate, 13 State Street, Charleston, SC 29401, (843) 577-6555. Please call this Agent with any questions you may have regarding the sale.

COMPENSATION TO SALES AGENT/AUCTIONEER/BROKER/ETC.: \$48,000.00 = Six (6%) percent of the contract sales price. Please note that this amount may increase if the sales price increases.

EXPENSES OF SALE: Normal seller's closing costs estimated to be \$8,000.00 or 1% of the gross sales price.

LIENS/MORTGAGES/SECURITY INTERESTS ENCUMBERING PROPERTY: The sale is free and clear of all liens, judgments, encumbrances and other disputed interests. There is a valid first mortgage lien held against this real property by Branch Banking & Trust ("BB&T") which is owed approximately \$520,150, plus interest and other charges to be determined by this Court or by an agreement of the parties. The principal and interest shall be paid in full at closing. The property shall be sold free and clear of the mortgage with the lien to attach to the "net proceeds" as defined herein until any other charges are agreed to by the parties or determined by this Court. Charleston County real property taxes are a lien against this real property, which will be pro-rated through closing, in an amount to be determined. After payment of normal sellers closing costs, as well as real estate commissions, any remaining sale proceeds shall be considered the "Net Sale Proceeds".

On or about September 14, 2001, Construction Consultants, LLC filed a Lis Pendens with the Clerk of Court in Charleston County, South Carolina, against the above described real property. On that same date a Summons and Complaint were filed against the Debtor and other defendants and was assigned Case Number 01-CP-10-3548. The Complaint alleged in part that Construction Consultants, LLC had an oral partnership agreement with the Debtor and/or other defendants concerning the ownership of this real property. The Debtor and other defendants timely filed an answer denying the allegations in the Complaint. The Debtor disputes that Construction Consultants, LLC has any interest in the real property. The sale

of this real property shall be free and clear of the disputed interest of Construction Consultants, LLC, with that disputed interest, if any, attaching to the Net Sale Proceeds, as defined herein subject to the mortgage lien of BB&T, until the further Order of the Bankruptcy Court or other court of competent jurisdiction.

**In the event the Purchaser named herein is not the ultimate purchaser of the subject real property, but has removed all contingencies including the financing contingency as provided for in the underlying real estate contract, the Purchaser shall be allowed to file an administrative priority expense claim for reasonable costs of the inspection. This claim will be paid pursuant to the terms of the Debtor's confirmed plan.**

DEBTOR'S EXEMPTION: \$-0-

PROCEEDS ESTIMATED TO BE PAID TO ESTATE: Approximately \$223,850

USE OF PROCEEDS: The Net Sale Proceeds shall be placed in the Debtor in Possession Account and used to pay approved administration expenses; or as otherwise ordered by this Court.

Applicant is informed and believes that it would be in the best interest of the estate to sell said property by private sale. Applicant also believes that the funds to be recovered for the estate from the sale of said property justify its sale and the filing of this application.

The Court may consider additional offers at any hearing held on this notice and application for sale. The Court may order at the hearing that the property be sold to another party on equivalent or more favorable terms.

Applicant requests that the ten (10) day stay pursuant to Fed.R.Bankr.P. 6004(g) be waived in this matter and that upon the entry of the Order the Debtor be allowed to immediately enforce and implement the terms of said Order.

The Debtor may seek appropriate sanctions or other similar relief against any party filing a spurious objection to this notice and application.

WHEREFORE, applicant requests the court issue an order authorizing sale of said property and such other and further relief as may be proper.

CAMPBELL LAW FIRM, P.A.

KEVIN CAMPBELL  
Attorney for Debtor  
Post Office Box 684  
Mt. Pleasant, SC 29465  
(843) 884-6874/884-0997(fax)  
District Court ID No. 30

Dated this 31<sup>st</sup> day of May, 2002.



**AGREEMENT TO BUY AND SELL REAL ESTATE  
RESIDENTIAL - SUBJECT TO FINANCING or CASH TERMS**

1. **PARTIES:** This legally binding Agreement between, Buyer(s) Clay Rice (hereinafter called "BUYER"), and Seller(s) Suter Property Group (hereinafter called "SELLER"). The property shall be deeded in the name(s) of Clay Rice and/or his assigns *CR*

2. **PROPERTY TO BE SOLD:** Subject to terms and conditions herein, Seller agrees to sell and Buyer agrees to buy the following described property with improvements and fixtures thereon:

Lot \_\_\_\_\_ Block \_\_\_\_\_ Section \_\_\_\_\_ Subdivision Wagner Terrace  
Address SB Simmons Street  
Tax Map # 4631201142 City Charleston Zip 29403  
County of Charleston, State of South Carolina.

Seller represents that the property is connected to [ ☒ public sewer system or to [ ] septic tank or to [ ☒ public water or to [ ] well system or to [ ] other \_\_\_\_\_

No personal property will convey as a part of this sale, except as described: (attach addendum if necessary) All Appliance to convey in "as-is" condition

3. **CONVEYANCE SHALL BE MADE:** Conveyance shall be made subject to all easements as well as covenants of record (provided they do not make the title unmarketable) and to all governmental statutes, ordinances, rules and regulations. Seller agrees to convey by marketable title and deliver a proper general warranty deed, if applicable, free of encumbrances, except as herein stated. Seller agrees to pay all statutory deed recording fees. The deed shall be delivered at the stipulated place of closing, and transaction closed on or before July 31, 20 07. ~~TIME IS OF THE ESSENCE~~. Seller and Buyer authorize their respective attorneys and the settlement agent to furnish to Listing Broker and Selling Broker copies of the final HUD-1 settlement statement for the transaction for their review prior to closing.

4. **POSSESSION:** Possession of said property will be given to Buyer on the day of closing. Seller agrees to deliver property free of debris and in a clean condition. The property, including but not limited to, landscaping and lawn, shall be maintained in the same condition from the effective date of this agreement until possession is delivered, ordinary wear and tear accepted. Possession by Buyer before closing or by Seller after closing shall be subject to the terms and conditions of a separate agreement to be executed prior to closing or occupancy.

5. **PURCHASE PRICE** shall be Eight Hundred Thousand dollars, \$ 800,000

6. **METHOD OF PAYMENT:** Purchase price shall be paid as follows: [ ] Cash; or [ ☒ Subject to Financing. Financing to be obtained by [ ] Conventional [ ] Seller [ ] VA [ ] FHA [ ] Other terms: \_\_\_\_\_

7. **EARNEST MONEY:** This offer is accompanied by an earnest money deposit of \$ See Addendum "A". Buyer and Seller authorize Prudential Carolina Real Estate as Escrow Agent, to hold and disburse earnest money according to the terms of this agreement. Earnest money paid by [ ] Cash, [ ☒ Check, or [ ] Other. Broker does not guarantee payment of a check or checks accepted as earnest money. All escrow money received shall be deposited as required by South Carolina law and South Carolina Real Estate Commission Rules and Regulations. At the consummation of this sale, the earnest money deposit shall be credited to the Buyer.

THE PARTIES UNDERSTAND THAT, UNDER ALL CIRCUMSTANCES, INCLUDING DEFAULT, THE BROKER HOLDING THE EARNEST MONEY DEPOSIT WILL NOT DISBURSE IT TO EITHER PARTY UNTIL BOTH PARTIES HAVE EXECUTED AN AGREEMENT AUTHORIZING THE DISBURSEMENT OR UNTIL A COURT OF COMPETENT JURISDICTION HAS DIRECTED A DISBURSEMENT. *5/29/02*

[ ☒ ] BUYER [ ] BUYER [ ☒ ] SELLER [ ] SELLER HAVE READ THIS PAGE

**EXHIBIT "A"**

See Addendum A

8. **LOAN PROCESSING AND APPLICATION:** Buyer's obligation is contingent on Buyer obtaining said loan. Buyer shall apply for a 80 % loan within 15 days from the execution of this Agreement and shall provide Seller with satisfactory loan approval within 15 days. **TIME IS OF THE ESSENCE.** Should the Buyer fail to make loan application or receive approval within said period, and to diligently pursue the application, the Seller shall have the option to terminate this Agreement, with written notice. Buyer also agrees to provide all documents or information requested by the lending company in a prompt and timely manner. Buyer will take any action that is needed or requested by Lender to process the loan application. Buyer further hereby gives permission to Lender to disclose pertinent information concerning the Buyer's credit-worthiness or any other information needed for the loan processing to the listing or cooperating broker(s) or agent(s). If Buyer fails to comply with these above conditions, Buyer shall be in default of this agreement subject to the terms of paragraph 16.

~~FHA Mortgage Insurance [ ] will [ ] will not be added to the mortgage. VA funding fee [ ] will [ ] will not be added to the mortgage.~~

9. **CLOSING COSTS:** Unless otherwise agreed, closing costs, including all loan charges and prepaid recurring items, shall be paid as follows:

(a) SELLER shall provide or pay for preparation of deed, any recording charge based on value of property, and all costs necessary to deliver a marketable title, including recording of satisfactions and property taxes to the day of closing.  
(b) BUYER shall pay, unless otherwise agreed herein, the cost of the Buyer's credit report, property insurance, appraisal, survey, cost of obtaining loan, discount points, title examination, escrow deposits, and prepaid expenses. The Buyer shall also pay, if applicable, interim interest and mortgage insurance premium or VA funding fee. Buyer's hazard insurance policy shall provide coverage as required by lender. Other terms: \_\_\_\_\_

10. **HOME PROTECTION PLAN COVERAGE:** Both parties understand that a third party home warranty Plan [ ] will [ ☒ ] will not be issued at closing. If applicable, the warranty premium will be paid at closing by the [ ] Buyer or [ ] Seller not to exceed \$ NA

11. **EXPIRATION OF OFFER:** The offer from Buyer shall be withdrawn at 8:00 o'clock P M. on 5-30-2002 unless accepted or countered by Seller in written form prior to such time. **TIME IS OF THE ESSENCE.**

12. **SPECIAL STIPULATIONS:** These stipulations shall preempt printed matter herein: See Addendum A - Pages 1 + 2

13. **ADJUSTMENTS:** Taxes, water, all sewer assessments, sewer charges, fuel oil, rents as when collected, insurance premiums, if applicable, and other assessments, including homeowner's association fees, shall be adjusted as of the date of closing. Tax prorrations pursuant to this Agreement are to be based on the tax information available on the date of closing, and are to be prorated on that basis. **BUYER TO BE RESPONSIBLE FOR APPLYING FOR ANY APPLICABLE TAX EXEMPTIONS.** Property taxes and rent, as well as other expenses and income of the property, if applicable, shall be apportioned to the date of closing. Annual expenses or income shall be apportioned using 365 days. Monthly property expenses or income shall be apportioned by the number of days in month of closing. Prorrations at closing shall be final.

14. **NON-RESIDENT TAX:** Seller covenants and agrees to comply with the provisions of South Carolina Code Section 12-8-580 (as amended) regarding withholding requirements of sellers who are not residents of South Carolina as defined in the said statute.

15. **RISK OF LOSS OR DAMAGE:** In case the property herein referred to is destroyed wholly or partially by fire or other casualty prior to delivery of deed, Buyer or Seller shall have the option for ten (10) days thereafter of proceeding hereunder, or of terminating this Agreement.

16. **DEFAULT:** If Buyer or Seller fails to perform any covenant of this Agreement, the other may elect to seek any remedy provided by law or terminate this Agreement with a five day written notice. If terminated, both parties shall execute a written release of the other from this contract and both shall agree to hold the Escrow Agent harmless. If termination is because of default by Buyer, Seller shall have the option of pursuing any remedy provided by law.

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[    ] BUYER [    ] BUYER [    ] SELLER [    ] SELLER HAVE READ THIS PAGE

If termination is because of default by Seller, the Seller shall pay and be limited to the Actual Cost Incurred (refer to Paragraph 17). If either Buyer or Seller refuses to execute release, Escrow Agent will hold the earnest money in trust until said releases are executed or until a court of competent jurisdiction dictates legal disposition.

17. **ACTUAL COST INCURRED** shall include all costs and expenses incurred or obligated for by Buyer or Broker in an effort to consummate this sale. Such costs shall include, but are not limited to, cost of credit report, appraisal, survey, inspections and reports, title examination, and Broker's fee or commission for this sale.

18. **SURVEY, TITLE EXAMINATION, AND INSURANCE:** The Listing and Cooperating Broker(s) and their Agent(s) recommend that Buyer have a survey of the subject property made, have examination as to the title to the property, obtain owner's title insurance, and that Buyer obtain appropriate hazard insurance coverage effective with the time of closing. All hazard insurance to be canceled and new policies furnished by Buyer at closing unless otherwise stipulated in this Agreement. Flood insurance, if required by Lender at Buyer's option, shall be assigned to Buyer with permission of carrier, and premium prorated to date of closing.

**19. CONDITION OF PROPERTY:**

(A) **Disclaimer:** Except as to a new home being sold by the builder, where the builder's warranty applies, the Buyer acknowledges the Seller, except as provided in subparagraphs (B), (C), (D), and (E) of this section, gives no guarantee or warranty of any kind, expressed or implied, as to the physical condition of the property or to the conditions of or existence of improvements, services, appliances or system thereto, or as to merchantability or fitness for a particular purpose as to the property or improvements thereof, and any implied warranty is hereby disclaimed by the Seller. Neither Buyer nor Seller will hold Cooperating or Listing Broker responsible for any act of negligence or intent by any inspection or repair company employed by Seller or Buyer for the purposes of this agreement. The Seller is not required to make any repairs under any circumstances until Purchaser's financing has been approved.

(B) **Inspection:** Buyer at Buyer's expense shall have the privilege and responsibility of inspecting the structure, square footage, environmental concerns including but not limited to radon gas, lead-based paint and lead-based paint hazards, wetlands study, appurtenant buildings, heating, air conditioning, electrical and plumbing systems as well as built-in appurtenant equipment or appliances prior to the day of closing or possession. In the event repairs are necessary to place the heating system, air conditioning, plumbing, electrical system, and any appliances to be conveyed in operative condition and to make the roof free of leaks, and the dwelling structurally sound, the Seller shall be notified within 7 days after both parties have signed this Agreement. TIME IS OF THE ESSENCE. Seller agrees to place the heating system, air conditioning, plumbing, electrical system and any appliances to be conveyed in operative condition, and to make the roof free of leaks, and the dwelling structurally sound, subject to limitations in section (E). The aforementioned shall be done on or before the closing or possession, whichever occurs first. If Lender's commitment requires any additional inspections or certifications, these are to be provided by Buyer.

(C) **Maintenance:** After any inspection by Buyer and after repairs, if any, made as a result of any such inspection, the Seller agrees to maintain the heating, air conditioning, plumbing, and electrical systems, as well as all appliances to be conveyed in operative condition, normal wear and tear excepted, until the day of closing or the day possession is given, whichever occurs first. Seller agrees to maintain the property, including lawn, shrubbery and grounds until the day of closing or possession, whichever occurs first.

(D) **Wood Infestation Report:** If the property to be sold has been previously occupied, [ ] The Buyer [X] The Seller shall, at their expense, have the property inspected and shall obtain a current Wood Infestation Report (CL100) from a licensed and bonded pest control operator, on or before closing 2002. TIME IS OF THE ESSENCE. The Seller makes no warranties with regard to matters covered by such report or any other improvement unless specifically stated in this agreement. If the infestation report reveals the presence of or damage by termite infestation or other wood destroying organisms, Seller shall remedy such deficiencies and shall furnish Buyer with a report of a qualified inspector that property is free from infestation or damage herein mentioned or that infestation or damage has been treated and/or repaired as appropriate in a workmanlike manner on or before closing.

If the property to be sold has not been previously occupied, Seller shall certify that the dwelling has been treated by soil poisoning for the prevention of termites and other wood destroying organisms and shall provide the Buyer, at closing, a written certification from a licensed pest control operator.

(E) **Repairs:** The cost of all repairs to heating system, air conditioning, plumbing, electrical system and any appliances to be conveyed, and to make the roof free of leaks, and the dwelling structurally sound and treatment, if any, required by section (D) above, to be paid by Seller. If the Seller refuses to make these repairs, the Buyer shall have the right to terminate this Agreement, subject to paragraph 7. The repairs to any other items are the sole responsibility of Buyer. The obligations of Seller under paragraph 19 terminate on the day of closing or on the day possession is given, whichever occurs first.

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(F) **Residential Dwellings Built before 1978:** (check one of the following)

☐ This contract is contingent upon a risk assessment or inspection of the property for the presence of lead-based paint and/or lead-based paint hazards which shall be done, at the Buyer's expense, by midnight on the tenth day after ratification of this contract or by midnight on \_\_\_\_\_, 20\_\_\_\_. (Intact lead-based paint that is in good condition is not necessarily a hazard. See EPA pamphlet "Protect Your Family From Lead in Your Home" for more information). This contingency will terminate at the above predetermined deadline unless the Buyer (or Buyer's agent) delivers to the Seller (or Seller's agent) a written contract addendum listing the specific existing deficiencies and corrections needed, together with a copy of the inspection and/or risk assessment report. The Seller may, at the Seller's option, within \_\_\_\_\_ days after Delivery of the addendum, elect in writing whether to correct the condition(s) prior to settlement. If the Seller will correct the condition, the Seller shall furnish the Buyer with certification from a risk assessor or inspector demonstrating that the condition has been remedied before the date of the settlement. If the Seller does not elect to make the repairs or if the Seller makes a counter-offer, the Buyer shall have \_\_\_\_\_ days to respond to the counter-offer or remove this contingency and take the property in "as-is" condition or this contract shall become void. Upon such termination, the earnest money deposit of Buyer shall be returned to Buyer and neither party shall have any further rights hereunder. The Buyer may remove this contingency at any time without cause; or

☒ Buyer waives the opportunity to conduct a risk assessment or inspection for lead-based paint and/or lead-based paint hazards.

20. **APPRAISED VALUE:** The lot or parcel with building and improvements thereon, if any, must appraise, according to the lender's appraisal or other appraisal as agreed, for the selling price or more or the Seller may elect to sell for the appraised value. In such case, the Buyer agrees to proceed with the consummation of this sale at the reduced price. However, if Seller does not agree to sell at appraised value, the Buyer shall have the option of proceeding with the consummation of the Agreement without regard to the amount of the appraised valuation.

21. **DISCLAIMER BY BROKERS AND AGENTS:** The parties acknowledge that the Listing and Cooperating Broker(s) and their Agent(s): (1) Give no guaranty or warranty of any kind, express or implied, as to the physical condition of the property or as to condition of or existence of improvement services or systems, thereto, included but not limited to termite damage, roof, basement, appliances, heating and air conditioning systems, plumbing, sewage, electric systems, and to the structure; (2) Give no warranty, express or implied, as to the merchantability or fitness for a particular purpose as to the property or such improvements thereto and any implied warranty hereby disclaimed; (3) Give no warranty as to title; (4) Give no guaranty on warranty concerning (a) any certification or inspection concerning the condition of the property, (b) any matters which would be reflected by current survey of the property, and (c) the accuracy of the published square footage of the property; (5) Buyer acknowledges that Seller and Seller's Agents have not made any oral or written commitments to Buyer regarding (a) projected income or economic benefit for Buyer from rentals; (b) rental arrangements except that Buyer may rent the unit if Buyer so desires or (c) other economic benefits to the Buyer.

22. **COASTAL TIDELANDS & WETLANDS ACT:** In the event the property is affected by the provisions of the South Carolina Coastal Tidelands & Wetlands Act (Section 48-39-10, et seq., South Carolina Code of Laws), an Addendum will be attached to this Agreement incorporating the required disclosures at ☐ Buyer's ☐ Seller's expense.

23. **MEDIATION CLAUSE.** Any dispute or claim arising out of or relating to this Agreement the breach of this Agreement or the services provided in relation to this Agreement, shall be submitted to mediation in accordance with the Rules and Procedures of the Dispute Resolution System of the NATIONAL ASSOCIATION OF REALTORS®. Disputes shall include representations made by the Buyer(s), Seller(s) or any real estate broker or other person or entity in connection with the sale, purchase, financing, condition or other aspect of the property to which this Agreement pertains, including without limitation allegations of concealment, misrepresentation, negligence and/or fraud. Any agreement signed by the parties pursuant to the mediation conference shall be binding. This mediation clause shall survive for a period of 120 days after the date of the closing.

The following matters are excluded from mediation hereunder: (a) judicial or non-judicial foreclosure or other action or proceeding to enforce a deed of trust, mortgage, or land contract; (b) an unlawful detainer action; (c) the filing or enforcement of a mechanic's lien; (d) any matter which is within the jurisdiction of a probate court; (e) the filing of an interpleader action to resolve earnest money disputes. The filing of a judicial action to enable the recording of a notice of pending action, for order of attachment, receivership, injunction, or other provisional remedies, shall not constitute a waiver of the right to mediate under this provision, nor shall it constitute a breach of the duty to mediate.

24. **SURVIVAL:** If any provision herein contained which by its nature and effect is required to be observed, kept or performed after the closing, it shall survive the closing and remain binding upon and for the benefit of the parties hereto until fully observed, kept or performed.

☒ BUYER ☐ BUYER ☒ SELLER ☐ SELLER HAVE READ THIS PAGE

25. **ENTIRE BINDING AGREEMENT:** This written instrument, including the additional terms and conditions set forth on the reverse, expresses the entire agreement and all promises, covenants, and warranties between the Buyer and Seller. It can be changed only by a subsequently written instrument signed by both parties. Both Buyer and Seller hereby acknowledge that they have not received or relied upon any statements or representations by either Broker or their agents which are not expressly stipulated herein. The benefits and obligations shall inure to and bind the parties hereto and their heirs, assigns, successors, executors, or administrators. Whenever used, singular shall include plural, and use of any gender shall include all.

26. **FACSIMILE AND OTHER ELECTRONIC MEANS:** The parties agree that the offer, any counteroffer and/or acceptance of any offer or counteroffer may be communicated by use of a fax or other secure electronic means, including but not limited to electronic mail and the internet, and the signatures, initials and handwritten or typewritten modifications to any of the foregoing shall be deemed to be valid and binding upon the parties as if the original signatures, initials and handwritten or typewritten modifications were present on the documents in the handwriting of each party.

**THIS IS A LEGALLY BINDING AGREEMENT. BOTH BUYER AND SELLER SHALL SEEK FURTHER ASSISTANCE IF THE CONTENTS ARE NOT UNDERSTOOD. BOTH BUYER AND SELLER ACKNOWLEDGE RECEIPT OF A COPY OF THIS AGREEMENT.**

**ALL TERMS AND CONDITIONS OF THIS AGREEMENT DO NOT SURVIVE CLOSING UNLESS OTHERWISE SPECIFIED.**

IN WITNESS WHEREOF, this Agreement has been duly executed by the parties.

BUYER: [Signature]

Date 9/28/02

Time \_\_\_\_\_

WITNESS: Caroline Rice

Date 5/28/02

Time 9:58 a.m.

BUYER: \_\_\_\_\_

Date \_\_\_\_\_

Time \_\_\_\_\_

WITNESS: \_\_\_\_\_

Date \_\_\_\_\_

Time \_\_\_\_\_

SELLER: James L. H. for Scler Property Group

Date 5/29/02

Time 12 p

WITNESS: William Thompson

Date 5-29-02

Time 12:07

SELLER: \_\_\_\_\_

Date \_\_\_\_\_

Time \_\_\_\_\_

WITNESS: \_\_\_\_\_

Date \_\_\_\_\_

Time \_\_\_\_\_

LISTING AGENT AND COMPANY Billy Storen / Belser Thompson Real Estate

SELLING AGENT AND COMPANY Pat Wallen / Prudential Carolina RE

ESCROW AGENT ACKNOWLEDGMENT \_\_\_\_\_

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Addendum "A"

Page 1 of 2

Buyer: Clay Rice  
Seller: Suter Properties LLC  
Address: 58 Simmons Street  
Charleston SC 29403

It is understood and agreed by all parties that the following stipulations will be applied to the sales agreement dated 5-27-02 for the property located at 58 Simmons Street. This addendum preempts printed matter in the original agreement to purchase.

All time frames regarding the buyer's responsibilities will begin once the buyer is notified in writing that a motion to sell the property to the buyer has been filed with the US Bankruptcy Court.

Sale is subject to the buyer's complete satisfaction of a home inspection or the buyer reserves the right to void this agreement and all earnest monies will be returned. Buyer has 10 days to perform the home inspection from the date notification is delivered to the selling agent and the buyer that a motion to sell the property to the buyer has been filed with the US Bankruptcy Court. Buyer agrees to remove this contingency by delivering a document in writing addressed to the seller's agent by 5:00 pm on the 10<sup>th</sup> day. If for some reason the buyer is not satisfied with the inspection results, the buyer reserves the right to void this agreement and all earnest monies will be returned immediately.

The Debtor-In-Possession is selling the within referenced property subject to the other provisions set forth in the addendum in "as-is" condition with no warranties whatsoever. The buyer agrees to accept the property with all unit faults. The debtor in possession makes no warranty, express or implied, regarding the property, and specifically excludes any implied warranty of merchantability and any implied warranty of fitness for a particular use.

The sale of this property is subject to the approval of the United States bankruptcy Court.

The property shall be conveyed by quit claim deed.

In the even the buyer is not the ultimate purchaser of the subject property but had removed the inspection contingency as provided herein, then the seller agrees to move the United States for an order to allow the buyer an administrative priority claim herein for the cost of the inspection.

All parties agree that this sale is subject to the buyer obtaining satisfactory financing terms from the lender of his choice or the buyer reserves the right to void this agreement and all earnest monies will be returned immediately. Buyer agrees to apply for the loan within 10 days of the date notification is delivered to the selling agent and the buyer that a motion to sell the property to the buyer has been filed with the US Bankruptcy Court. Buyer agrees to provide an approval letter within 20 days of the date notification is delivered to the selling agent and the buyer that a motion to sell the property to the buyer has been filed with the US Bankruptcy Court. This approval letter is to be subject to the lenders requirements regarding obtaining a satisfactory appraisal on the property, verifying documentation and obtaining a satisfactory title search.

Sale is subject to the buyer' already under contract property located at 3500 North Oak Street, Myrtle Beach SC closing. This sale to work in conjunction with a 1031 tax exchange for this property. If for any reason this property does not close, all earnest monies will be returned in full immediately.

Earnest money to be delivered within ~~72 hours~~ of the buyer being notified that a motion to sell the property to the buyer has been filed with the US Bankruptcy Court. Earnest money to be \$2000.00 and held in ~~Prudential Carolina~~ real estate escrow account.

Belzer

Thompson

Buyers Initials

ca

Sellers Initials

17/29/02

Addendum "A"  
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Sale is subject to the buyer verifying the status of the current zoning and any deed restrictions on the property. Buyers attorney to perform a title search and verify these zoning issues within 10 days of the date notification is delivered to the selling agent and the buyer that a motion to sell the property to the buyer has been filed with the US Bankruptcy Court. If the buyer is unsatisfied with the title search and/or zoning results, the buyer reserves the right to void this agreement and all earnest monies will be returned immediately. If the buyer is satisfied, written notification will be delivered to the sellers agent by 5:00 pm on the 10<sup>th</sup> day the date notification is delivered to the selling agent and the buyer that a motion to sell the property to the buyer has been filed with the US Bankruptcy Court.

Sale is subject to the buyer's attorneys approval or the buyer reserves the right to void this agreement and all earnest monies will be returned immediately. Contingency to be removed in writing and delivered to the seller's agent by 5:00 P.M within 10 days from the date notification is delivered to the selling agent and the buyer that a motion to sell the property to the buyer has been filed with the US Bankruptcy Court.

Sale is subject to the buyers obtaining rental information from the current property manager and being totally satisfied with the results or the buyers reserve the right to void this agreement and all earnest monies will be returned immediately. Contingency to be removed within 10 days of that a motion to sell the property to the buyer has been filed with the US Bankruptcy Court.

*✓* Seller shall provide to Buyer <sup>a copy of</sup> the 2001 Tax Return filed with the IRS concerning this property within 5 days of the ratification of this contract. If Buyer finds the income, or any information, to be unsatisfactory, Buyer may terminate this contract & receive his earnest money. If Buyer finds the results to be satisfactory, Buyer shall waive this provision.

Buyer *[Signature]* Date 5/28/02 Witness \_\_\_\_\_

Seller *[Signature]* Date 5/29/02 Witness *William D. Stoen*

*✓* Buyer shall have the right, & Seller agrees to permit, Buyer to form a limited liability company which shall receive title to the property, upon ratification of this contract, Buyer will notify Seller of the name of the LLC.